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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF TEXAS; STATE OF
HAWAII; STATE OF MARYLAND;
COMMONWEALTH OF
MASSACHUSETTS; STATE OF
MINNESOTA; STATE OF NEW YORK,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ORACLE CORPORATION,

Defendant - Appellee,

v.

FIDELITY EMPLOYER SERVICES
COMPANY, LLC,

Third-party-defendant -
Appellant.

No. 04-15531

D.C. No. CV-04-00807-VRW

MEMORANDUM^{*}

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Northern District of California
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted November 18, 2005
San Francisco, California

Before: GOODWIN, O'SCANNLAIN, and TALLMAN, Circuit Judges.

The appellant challenges the district court's grant of a protective order in an antitrust suit between two other parties, Oracle Corporation (Oracle) and the United States Department of Justice (DOJ). The appellant contends that the protective order improperly allows Oracle's in-house counsel access to its highly-confidential documents. These documents were used by the DOJ in the course of preparation for litigation and were thus subject to production pursuant to the Federal Rules of Civil Procedure. Because the underlying litigation is over, DOJ has decided not to appeal, Oracle's outside counsel has promised to refrain from disclosing the documents, and the documents were discoverable, the parties lack a legally cognizable interest in the outcome of this litigation. Thus, the appeal is moot. *See, e.g., Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1108 (9th Cir. 2005). Further, even if the district court's protective order was insufficient, Fidelity Employer Services Company's harm is not likely to be repeated, nor would it

typically evade review. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 481 (1990). We dismiss for lack of jurisdiction.

DISMISSED.